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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Edward J Gladney,

10 Plaintiff,

11 v.

12 JT Shartle, et al.,

13 Defendants.
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No. CV-17-00427-TUC-DCB

ORDER

15 On December 19, 2018, the Court granted in part and denied in part a Motion to
16 Compel discovery filed by the Plaintiff. The Court ordered Defendants to provide *in*
17 *camera* certain potentially responsive documents which Defendants asserted were
18 confidential and covered by the Privacy Act or of a highly sensitive nature reflecting law
19 enforcement security information. Due to the shut-down of the federal government, the
20 case was stayed, including this discovery. On February 1, 2019, the Defendants filed a
21 Notice of resumed government activity. The Court lifts the stay and grants in part and
22 denies in part the remainder of the Plaintiff's Motion to Compel. (Doc. 41.)

23 The Court has reviewed the documents tendered *in camera*. There is no question
24 that the post orders reflect highly sensitive security law enforcement information. In part
25 the information contained in the post orders is unnecessary because the Defendants have
26 admitted that the perpetrator of the alleged sexual assault¹ was out of bounds. Relevant to

27
28 ¹ The Court describes the altercation between the two inmates as a sexual assault because
the perpetrator touched the Plaintiff to pull the victim's pants down; the perpetrator then
self-masturbated in front of the victim.

1 the question of negligence, and not admitted, is the question of: why was the perpetrator
2 inmate out of bounds?

3 Request for Production No. 1 and 3.

4 Plaintiff seeks discovery of any and all duties of Housing Unit Officers at USP
5 Tucson that existed on May 19, 2016 (the day he was assaulted). Plaintiff asks how did
6 the alleged assailant gain access to B-2 Unit at USP Tucson on May 19, 2016, between the
7 hours of 9:01 am—10:05pm?

8 The post orders are relevant to the question of negligence because they reflect a
9 highly structured inmate tracking system, including stand-up body counts, inmate
10 identification cards, passes, and very specific procedures for monitoring inmates as they
11 move within the prison facility such as going from cell to job assignment, to a medical
12 appointment, etc. The Defendants have admitted that the alleged assailant was out of
13 bounds, but the investigation report presented *in camera* was into the alleged assault, not
14 the out of bound status of the alleged assailant. Defendants respond that they have
15 produced the BOP's Program Statement 5500.14, *Correctional Services Procedures*
16 *Manual*. The Court notes that Defendants include in the *in camera* review materials,
17 Program Statement 550014B, *Complex Supplement: Inmate Accountability*. The Court
18 does not know whether this is a copy of the Program Statement actually disclosed or a
19 Supplement, and the Defendants make no argument as to whether the Supplement should
20 be disclosed or not.

21 The Defendants respond to Plaintiff's discovery request that they consulted with the
22 officer on duty at the time of the assault, and he reported that he did not recall the alleged
23 assailant entering the housing unit or the circumstances of the event, therefore, Defendants
24 do not know what happened or how the alleged assailant came to be out of bounds. The
25 *Complex Supplement: Inmate Accountability* Program Statement 5500.14B and the post
26 notes suggest, otherwise. Both reflect specific procedures are in place for tracking inmate
27 movement 24/7 within the facility; there appear to be procedures in place, which if
28 followed, would enable the Defendants to know the exact whereabouts of an inmate at any

1 given point in time. It was not enough to ask the officer on duty, randomly checking
2 passes, if he knew what happened. The relevant question is the one asked by the Plaintiff:
3 how did the alleged assailant gain access to B-2 Unit at USP Tucson on May 19, 2016,
4 between the hours of 9:01 am—10:05pm? The answer should be given in the context of
5 the system designed to monitor inmate whereabouts.

6 The Court concludes, however, that disclosure of the post notes is not necessary
7 because this information can be provided to the Plaintiff through other means, such as has
8 been done by Defendants in producing Program Statement 5500.14 and 5500.14B. The
9 inmate accountability system reflected in the post notes is of course revealed to all inmates
10 to the extent they need to know the appropriate procedures which must be followed for
11 compliance, i.e., to not be considered out of bounds. In other words, inmates are required
12 to follow specific procedures, such as carrying an identification card, standing up for
13 counts, checking in and out when moving from one place to another, etc. Obviously, these
14 requirements are communicated to all inmates, including the Plaintiff.² Defendants need
15 only disclose which one of these known inmate accountability requirements the alleged
16 assailant violated when he was admittedly out of bounds in Plaintiff's unit. It is not enough
17 for Defendants to simply admit that the alleged assailant was out of bounds because he was
18 somewhere, where he was not supposed to be. The admission does not make these two
19 discovery requests irrelevant to the question of negligence.

20 Request for Production No 6.

21 The alleged assailant inmate's disciplinary history is relevant to show whether the
22 Defendants should have known that he needed to be housed in a facility where he would
23 be subject to closer supervision.

24 Request for Production No. 7.

25 Even though the Defendants do not dispute that the sexual assault occurred, the
26 incident report given to the alleged assailant is relevant because it goes to the nature of the
27 Plaintiff's injuries. The fact that it has already been disclosed to the alleged assailant
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1 reduces the risk of its disclosure to third-party witnesses who were interviewed as part of
2 the investigation. If Defendants believe that any of the third-party witnesses might be at
3 risk from the disclosure of the investigative report to the Plaintiff, the Defendants may
4 redact the third-party witnesses' statements.

5 Request for Production No. 8.

6 Even though the Defendants admit that the alleged assailant was transferred, any
7 information as to why he was transferred may be relevant to Plaintiff's claim that
8 Defendants acted negligently by not exercising sufficient supervision over the alleged
9 assailant, i.e., housing the perpetrator inmate at FCC-Tucson was negligent.

10 As explained herein, the Plaintiff's Requests for Production are relevant, and Defendant
11 shall produce the discovery. The Defendants shall, however, provide a confidentiality
12 agreement to the Plaintiff which he must sign and return before Defendants are required to
13 produce document for Requests 6, 7 and 8.

14 **Accordingly,**

15 **IT IS ORDERED** that THE stay is lifted; the Court denies the Plaintiff's Motion
16 in Opposition to the Stay (Doc. 64) AS MOOT.

17 **IT IS FURTHER ORDERED** that the remainder of the Motion to Compel
18 Discovery (Doc 41) is GRANTED IN PART AND DENIED IN PART.

19 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the documents
20 reviewed *in camera* UNDER SEAL.

21 Dated this 19th day of March, 2019.

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Honorable David C. Bury
United States District Judge